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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Preemption of State and Local Zoning and)
Land Use Restrictions on the Siting)
Placement and Construction of Broadcast)
Station Transmission Facilities)
)

MM Docket No. 97-182

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OCT 30 1997

To: The Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF COSMOS BROADCASTING CORPORATION

Cosmos Broadcasting Corporation ("Cosmos"), by its attorneys, hereby submits its comments in response to the Commission's Notice of Proposed Rule Making regarding the above-referenced proceeding.^{1/} The NPRM seeks comments on the petition filed jointly by the National Association of Broadcasters and the Association of Maximum Service Television ("Petitioners") and related matters concerning the scope of any preemption of state and local laws in light of the Commission's commitment to a rapid roll-out of digital television ("DTV").^{2/} Cosmos supports the Petitioners and the Commission's efforts to obtain a detailed record in determining whether to exercise federal powers of preemption. Accordingly, in response to the Commission's request for information, Cosmos herein relates its previous

^{1/} *Preemption of State and Local Zoning and Land Use Restrictions*, Notice of Proposed Rule Making, rel. Aug. 19, 1997 (the "NPRM").

^{2/} *See, Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fifth Report and Order, MM Docket 87-268, 7 CR 863 (April 22, 1997).

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experience in constructing a new antenna tower for its authorized station, WAVE(TV), Louisville, Kentucky.

As detailed in the attached exhibit (Attachment A), the memorandum of the station manager states that due to filings with local zoning boards, the Kentucky Airport Zoning Commission, the FAA, the Commission, the State Historic Preservation Office, the Kentucky Circuit Court, the Kentucky Court of Appeals and the Kentucky Supreme Court, Cosmos required over six years in order to construct new broadcast facilities for WAVE(TV). It should be noted that federal agencies granted authorization and completed the initial appeals process in less than one year.

Based upon this experience and others, Cosmos wholly supports the Petitioners' proposed rule as a restrained and reasonable use of federal preemption power and urges the Commission to adopt the rule in its entirety. Cosmos agrees with the Petitioners' emphasis on establishing deadlines within which state and local governments must act. Timing issues are critical, but insufficient to assure that state and local governments do not unreasonably delay the DTV construction schedules. State and local governments should be unable to thwart well-considered federal policies in areas of environmental and health effects of RF emission, RF interference and FAA tower markings. The Commission has engaged in extensive research in RF emissions and interference and has sufficiently protected the public by establishing uniform standards. It is unlikely that state and local governments have the expertise or thorough record that would justify the imposition of, or a debate over, heightened requirements. The Commission is as dedicated to protecting the public's safety as

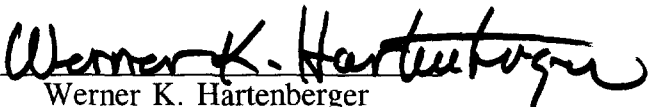
state and local governments. Petitioners' proposal properly defers to the Commission's expertise. Likewise, the FAA's interest in uniform tower markings should not be subordinated to local authorities.

However, Cosmos hereby requests that the Commission place the FAA on notice that the agency should attempt to process broadcaster filings in a timely fashion. Indeed, all federal agencies have a responsibility to promote the public's interest in the rapid deployment of this new digital television service. Cosmos asks that the Commission coordinate where possible with federal agencies to facilitate the Commission's policy goal of the accelerated introduction of DTV to the viewing public. If possible, agencies should agree upon reasonable timetables for the processing of broadcaster filings in a manner similar to that proposed by the Petitioners.

Cosmos respectfully asks that the Commission add these comments to the record as it examines whether to exercise federal preemption power.

Respectfully submitted,

COSMOS BROADCASTING CORPORATION

By: 
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Dated: October 30, 1997

ATTACHMENT A



To: STEVE SMITH

OCTOBER 29, 1997

FROM: GUY HEMPEL

The following is the time line for the Oldham County Tower Project:

6/21/84	Applied for "conditional use permit" from Oldham County to allow the tower on Ag-1 zoning
6/27/84	Applied to KAZC for permit for tower
7/5/84	Hearing for our "conditional use permit", permit granted
8/9/84	Purchased 177 acres of land for tower site.
10/18/84	KAZC hearing on our application
11/9/84	FAA hearing on our application for tower
12/14/84	FAA issued a determination of "no hazard" for our tower site
12/19/84	Obtained a building permit for the transmitter building from Oldham Co.
1/3/85	Hearing with KAZC
2/4/85	Various appeals to FAA on the "no hazard" determination
3/15/85	KAZC denied our application for tower
3/28/85	FCC grants our CP for tower/transmitter
6/10/85	FAA denied petition to reconsider, "no hazard" determination stands
11/18/85	Residents appeal to Oldham Board of Adjustments & Appeals
12/19/85	Hearing @ Oldham Board of Adjustments & Appeals (our permit stands)
2/12/86	Hearing @ Franklin Circuit Court. WAVE vs DOT-KAZC on KAZC denial of our permit for the tower.
7/2/86	Re-hearing in Franklin Circuit Court
2/2/87	Franklin Circuit Court ruling final and denied our appeal
3/3/87	Notice of our intent to appeal to Court of Appeals
5/14/87	WAVE filed appeal with Court of Appeals
6/2/87	KAZC files for dismissal of our appeal
7/20/87	WAVE filed documents with Court of Appeals
9/25/87	WAVE filed for amended tower height with KAZC

1/14/88	KAZC deferred action on our amended application pending court decision
4/6/88	Court of Appeals hearing on WAVE appeal of Franklin Circuit Court decision
6/22/88	Petitions filed by NBAA (National Business Aircraft Assoc.) to Court of Appeals for a re-hearing on our appeal
7/3/88	Court of Appeals decision in our favor
7/21/88	Residents appeal to Oldham County Board of Adjustments & Appeals again. We still keep our permit
9/16/88	Court of Appeals denies petition for re-hearing
10/6/88	DOT-KAZC motion for discretionary review by State Supreme Court
12/7/88	State Supreme Court denies motion by DOT-KAZC
1/5/90	Met with David Morgan of SHPO (State Historical Pres. Off.) on their complaints
Mar-May	Various petitions filed to SHPO and the FCC out the Ruban Sale home and it was on the Historical Register.
	Sometime in here we agreed with David Morgan that if we do more building in the future, we would look for "Indian bones" ? before we dig.
3/27/91	The FCC replies to Mrs. Martin about their position on the SHPO and other historical places.

After the Supreme Court decision we immediately started our construction process. The tower and transmitter were ordered. The interior of the transmitter building was completed in 1989.

The anchors were poured starting in January 1990, the tower steel was delivered in March 1990 and erection of the tower started on April 19, 1990. The transmitter was delivered in March 1990 and we started testing in a dummy load within a few weeks.

The tower-antenna was completed on June 19, 1990. After the transmission line was installed, we did some "on air testing" after regular sign off.

We signed on at the new site on August 9, 1990, strangely enough six years to the day after purchase of the property.

Our legal-consulting costs were \$280,282.38 during those six years.

GWH:kaf